



HARMONIZED SYSTEM
COMMITTEE

-
32nd Session
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NC0771E1
(+ Annexes I and II)

O. Eng.

Brussels, 23 September 2003.

CLASSIFICATION OF WHIPPED CREAM IN SPRAY FORM

(Item VII.1 on Agenda)

I. BACKGROUND

1. On 2 September 2003, the Secretariat received a note from the **EC** asking it to submit to the Harmonized System Committee the HS classification of whipped cream in an aerosol can. This request was prompted by the fact that the product at issue is the subject of a dispute between the **EC** and the **Republic of Korea** which could not be resolved bilaterally. The **EC** comments are set out below.

II. NOTE FROM THE EUROPEAN COMMUNITY

“Subject : HS Nomenclature classification of whipped cream in an aerosol can. Dispute between the **EC** and the **Republic of Korea**.

Ref. : Article 10.2 of the HS Convention

BACKGROUND

2. The **EC** wishes to place before the Harmonized System Committee a dispute between the **Community** and the Administration of the **Republic of Korea** concerning the tariff classification of “whipped cream in an aerosol can, containing 30% butyric fat in the milk”. The **Korean** Customs Administration would classify this product in HS heading 04.02 (subheading 0402.99), whereas the **EC** classifies it in heading 19.01 (subheading 1901.90).
3. The **German** Administration and the **EC** informed the **Korean** Administration of this dispute in letters dated 27 August 2002 and 30 January 2003, respectively. No replies to these letters have been received to date.

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

File No. 3001

DESCRIPTION OF THE PRODUCT :

4. The producer, **Hochwald Nahrungsmittel-Werke GmbH, D-54424 Thalfang (Germany)**, describes the product as follows (Annex 2) :

Cream in an aerosol can, containing 30 % butyric fat in the milk.

Standardised cream made from cows' milk :	85 % +/-5 % possible variation
Invert sugar syrup :	6 % +/-4 % possible variation
Dextrose :	< 0.5 %
Natural flavour (vanilla) :	< 0.5 %
Stabilising agent E 407 :	< 0.5 %
Propellant: nitrous oxide :	10 g +/- 5 g

5. Description provided by the **Korean** Ministry of Foreign Affairs and Trade :

Cream :	87 % (30 % fat)
Invert sugar syrup :	7 %
Condensed milk :	2.3 %
Glucose :	3.48 %
Vanilla flavour :	0.01 %
Carrageen E 407 :	0.01 %

6. Moreover, in order to facilitate the Committee's discussions, delegations will find at Annex I to this note a schematic presentation of the production process for cream in an aerosol can.

CLASSIFICATION QUESTIONOpinion of the **Republic of Korea** :

7. In a communication dated 6 September 1999, the **Korean** Ministry of Foreign Affairs and Trade argued that the ingredients of this product are covered by the text of heading 04.02. **Korea** considers that the vanilla flavour content is too low to exclude the product from that heading (Annex 2).

Opinion of the **EC** :

8. Given the ingredients present in the composition of this product, the **EC** considers that it falls in heading 19.01 of the Nomenclature appended to the HS Convention, by application of GIR 1.
9. This opinion is confirmed by the existing Explanatory Notes applicable to HS heading 04.02, which specify the additives which are permitted for the products of this heading and the reasons for their use, namely small quantities of stabilising agents (to maintain the natural consistency of the product during transport in liquid state), and very small quantities of anti-oxidants or of vitamins not normally found in the product. Certain products of this heading may also contain small quantities of chemicals necessary for their processing. However, vanilla flavour is not one of the additives permitted for the products of

Chapter 4. Consequently, the product must be classified in HS heading 19.01, which covers "food preparations (...) of headings 04.01 to 04.04 ..., not elsewhere specified or included".

10. Similarly, the HS Explanatory Note to heading 19.01 specifies that the preparations classifiable in this heading may contain, in addition to natural milk constituents, other ingredients not permitted in the products of headings 04.01 to 04.04.

CONCLUSION

11. The **EC** requests that the HS Committee confirms that this whipped cream in an aerosol can falls to be classified in HS Nomenclature subheading 1901.90, by application of GIR 1. Classification in Chapter 4 is not justified, given the presence of added vanilla. The presence of vanilla, albeit in very small quantities, is detectable by laboratory analysing
12. As this is a dispute between the **EC** and the **Korean** Administration, which we have not been able to settle bilaterally, the **EC** requests that the matter be referred to the HS Committee in accordance with Article 10.2 of the HS Convention."

III. SECRETARIAT COMMENTS

13. The Secretariat agrees with the **EC** that heading 04.02 ("Milk and cream, concentrated or containing added sugar or other sweetening matter") and heading 19.01 ("; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 % by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included") would merit consideration for classification of the product at issue. The Secretariat also agrees that whether products of heading 04.02 may contain a small quantity of vanilla flavour - or not - seems to be the point at issue in determining the correct classification of the product being discussed. However, since the matter is a dispute between two HS Contracting Parties, the Secretariat will leave it for the Committee to decide on the classification in accordance with the provisions of the HS Convention.
14. The Secretariat would, however, point out that the General Explanatory Note to Chapter 4 gives some guidance as to allowed added ingredients for products of this Chapter. For the ease of reference this Explanatory Note is reproduced below :
- "The products mentioned at Items (A) to (E) above may contain, in addition to natural milk constituents (e.g., milk enriched in vitamins or mineral salts), small quantities of stabilising agents which serve to maintain the natural consistency of the product during transport in liquid state (disodium phosphate, trisodium citrate and calcium chloride, for instance) as well as very small quantities of anti-oxidants or of vitamins not normally found in the product. Certain of these products may also contain small quantities of chemicals (e.g., sodium bicarbonate) necessary for their processing; products in the form of powder or granules may contain anticaking agents (for example, phospholipids, amorphous silicon dioxide)."
15. The Secretariat would also like to point out that according to the Codex Alimentarius Commission (an international government organisation with the major objective of developing standards for food circulating in international trade (and jointly funded by the Food and Agriculture Organisation and the World Health Organisation)) has worked out a standard for "cream for direct consumption". According to this standard, No. A-9-(1976), vanilla extracts, ethyl vanillin and vanillin are mentioned as food additives (flavours) (limited by GMP (Good Manufacturing Practise)).

III. CONCLUSION

16. The Committee is invited to rule on the classification of the whipped cream product at issue, on the basis of the information provided by the **EC** and the Secretariat's comments set out above.
17. The Committee is also invited to instruct the Secretariat as to what further action should be taken in this regard.

Whipped cream put up in an aerosol can. The cream contains standardised cream made from cows' milk, invert sugar syrup, dextrose, natural flavour (vanilla) (< 0.5 %), stabilising agent (E 407) and a propellant : nitrous oxide.

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Production of cream in an aerosol can

	Start-up Stage 1 Standardised cream	Cream in an aerosol can is made from pasteurised cream, which itself is made from cream which has been separated from category 1 raw milk
	Stage 2 Mixing tank	- addition of liquid sugar - addition of stabilising agents - addition of flavour
	Stage 3 Sterilising department	- heat treatment - filling in sterile conditions - cooling to filling temperature
Stage 4 Packaging equipment	Stage 5 "Cream in aerosol can" department	- sterilisation of aerosol cans - rinsing using a sterilise - rinsing with purified water - injection of steam into the cans - drying of the cans - filling in sterile conditions - degassing with N-O - labelling and fitting of a protective cap - inkjet coding - consolidated packaging
	Stage 6 Quality control	
	Stage 7 Paletting	
		Stage 8 Quarantine/storage End

Product description : cream in an aerosol can, with 30 % butyric fat in the milk

Ingredients :

Standardised cream made from cows' milk :	85 % +/- 5 %
Invert sugar syrup :	6 % +/- 4 %
Dextrose :	< 0,5 %
Natural flavour (vanilla) :	< 0,5 %
Stabilising agent E 407 :	< 0,5 %
Propellant : nitrous oxide :	10 g +/- 5 g

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Letter from the Korean Ministry of Foreign Affairs and Trade, of 6 September 1999

"The Ministry of Foreign Affairs and Trade of the Republic of Korea presents its compliments to the Embassy of the Federal Republic of Germany, and informs the Embassy, in reply to its verbal note N° 109/99 of 3 August 1999, that the Korean Customs Administration has re-examined the classification of the product "May Sahne Wunder", described below.

The product at issue consists of cream (30 % fat) (87 %), invert glucose syrup (7 %), condensed milk (2.3 %), concentrated milk (3.48 %), glucose (0.2 %), vanilla flavour (0.01 %) and carrageen E407 (0.01 %). Of these ingredients, the cream, the invert sugar syrup, the condensed milk, the concentrated milk and the glucose meet the description given in heading 04.02, covering "Milk and cream, concentrated or containing added sugar or other sweetening matter". Carrageen, as a stabilising agent, is an ingredient whose addition is permitted under the Explanatory Note to heading 04.02. As the vanilla flavour constitutes only a small proportion of the total ingredients, it does not in any way change the intrinsic characteristics of the cream. Consequently, "May Sahne Wunder" falls to be classified in subheading 0402 99 90 00."
